

## **Rule 8. Stay or Injunction Pending Appeal**

### **(a) Motion for Stay.**

(1) **Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

- (A) a stay of the judgment or order of a district court pending appeal;
- (B) approval of a supersedeas bond; or
- (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) **Motion in the Court of Appeals; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

- (i) show that moving first in the district court would be impracticable; or
- (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

- (i) the reasons for granting the relief requested and the facts relied on;
- (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
- (iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

**(b) Proceeding Against a Surety.** If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district

court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

**(c) Stay in a Criminal Case.** Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

***Local Rule 8. Stay or Injunction Pending Appeal.***

*Filing a notice of appeal does not automatically stay the operation of the judgment, order or decision for which review is sought. If an application to the district court for temporary relief pending appeal is not practicable, counsel must make a specific showing of the reasons the application was not made to the district court in the first instance. Any motion to the Court of Appeals should include copies of all previous applications for relief and their outcome and any relevant parts of the record. A Disclosure of Corporate Affiliations statement must accompany the motion and any response unless the parties have previously filed disclosure statements with the Court in the case. See FRAP 26.1 and Local Rule 26.1. Filing and assignment of emergency motions for stay or injunction pending appeal are governed by Local Rule 27(e). An order granting a stay or injunction pending appeal remains in effect until issuance of the mandate or further order of the Court and may be conditioned upon the filing of a supersedeas bond in the district court.*

*Former I.O.P.-8.1 redesignated Local Rule 8 December 1, 1995; amended February 1, 2001, and December 1, 2009.*